



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,022	12/10/2003	Toshihiko Kaku	4243-0107P	5185
2292 7590 08/18/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
WASHINGTON, JAMARES				
ART UNIT		PAPER NUMBER		
2625				
NOTIFICATION DATE		DELIVERY MODE		
08/18/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/731,022

**Applicant(s)**

KAKU, TOSHIHIKO

**Examiner**

JAMARES WASHINGTON

**Art Unit**

2625

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 28 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 28 July 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-7.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/King Y. Poon/  
 Supervisory Patent Examiner, Art Unit 2625

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's remarks are not persuasive.

Regarding the argument that even if the teachings of Yamamoto were properly combinable with the teachings of Nakajima et al. the resulting device would not teach or suggest a correcting section that includes an application of processing of detection of "red eye" problem.

Examiner disagrees. As stated in the response to arguments in the Final Office Action dated February 26, 2008, the references are properly and adequately combinable with reasonable rationale given the arguments submitted by Applicant dated November 19, 2007 in which the methodology of the combination was challenged and not the mere structural elements of the combination. The combination of Nakajima et al and Yamamoto is not a "literal" combination. Rather, Yamamoto is relied upon as a "teaching" (albeit a teaching of an extremely well known, almost ubiquitous concept of the red eye phenomenon being detected and corrected in image processing). Regarding the "newly presented" arguments challenging the structural combination, the structural elements of the "correcting section" that transfers image data to the image output section upon application of processing of detection and correction of a predetermined inconvenience is disclosed by Nakajima at Fig. 25 numeral 51. One of ordinary skill in the art, given the disclosed method and structure of the red eye correction and detection present in Yamamoto could have easily applied these prior art elements to the printer of Nakajima et al to yield the predictable results of outputting printed images having undergone red eye correction when deemed appropriate by the image output device.

Regarding the argument that the modes associated with prescan operation of Yamamoto are insufficient to teach an output mode of the image output section, Examiner agrees.

However, Yamamoto was not used to teach "an output mode of the image output section". Applicant is correct in stating that Nakajima et al discloses performing processing on the entire image depending on the output mode. Predictable results stemming from the combination would afford one of ordinary skill in the art the ability to either detect and correct red eye utilizing the method taught by Yamamoto when the structure of Nakajima et al determines it is necessary or not proceed with red eye detection or correction depending on the output mode.

Regarding the argument that Examiner has still failed to provide any motivation or rationale as to why one skilled in the art would modify the printer of Nakajima et al. to include the red eye correction section, including the additional components that support the red eye correction section, i.e., the display, the manipulating unit 18, etc. Examiner's statement merely addresses, arguendo, why one skilled in the art would address a red eye problem, not why one skilled in the art would modify a printer to include the correcting section as claimed.

Examiner partially agrees. Applicant is correct in stating that Examiner has failed to provide any motivation or rationale as to why one of ordinary skill in the art would modify the printer of Nakajima et al to include the structural elements as taught by Yamamoto. However, as previously stated, Applicant's arguments following the Non-Final Office Action dated July 17, 2007 did not challenge the "structural" combination of the cited references. The method performed by the structural elements was challenged. Examiner still maintains the previous grounds of rejection as stated above wherein the combination of Nakajima et al and Yamamoto is not a "literal" combination. Rather, Yamamoto is relied upon as a "teaching" (albeit a teaching of an extremely well known, almost ubiquitous concept of the red eye phenomenon being detected and corrected in image processing). Regarding the "newly presented" arguments challenging the structural combination, the structural elements of the "correcting section" that transfers image data to the image output section upon application of processing of detection and correction of a predetermined inconvenience is disclosed by Nakajima at Fig. 25 numeral 51. One of ordinary skill in the art, given the disclosed method and structure of the red eye correction and detection present in Yamamoto could have easily applied these prior art elements (including structural elements) to the printer of Nakajima et al to yield the predictable results of outputting printed images having undergone red eye correction when deemed appropriate by the image output device. Furthermore, both elements are found within the same field of endeavor in correcting or enhancing image data for output.

Regarding the argument that one skilled in the art would not look to incorporate red eye correction in the printer of Nakajima et al. The printer in Nakajima et al. performs automated image processing that does not require any input from the user. In contrast, in order to perform red eye correction, Yamamoto discloses that information is input from the user, i.e., designation of the frame to correct or identification of the eye section. This type of correction is more suited for an image processing apparatus that incorporates a keyboard, mouse, display, etc. The printer of Nakajima et al. does not incorporate these elements.

Examiner partially agrees in that Nakajima et al does not incorporate a keyboard, mouse, display, etc. However, the claim gives no such limitation which identifies the "process" in which red eye is corrected. Examiner need not provide a reference which incorporates the manner in which red eye is corrected when the claim limitation simply calls for detecting and correcting a predetermined inconvenience as to eyes. The combination teaches the presently presented limitation as to detecting and correcting a predetermined inconvenience as to eyes based on the output mode selected. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the printer to be connected to a computer, including a keyboard, mouse, etc. to perform the red eye correction as taught by Yamamoto.